



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF PBKA-, INC.

DATE: JUNE 27, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an architectural and engineering company, seeks to permanently employ the Beneficiary in the United States as an electrical designer/electrical engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Texas Service Center, denied the petition on July 22, 2014. On December 12, 2014, the Director denied the Petitioner's motion to reopen. The Director determined that the Petitioner had not established its ability to pay the proffered wage as of the priority date. The matter is now before us on appeal. The Petitioner asserts that it has established its ability to pay the proffered wage based upon compensation paid to the company's owner. Upon *de novo* review, we will sustain the appeal.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089, Application for Permanent Employment Certification, was accepted for processing by the Department of Labor (DOL). *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089, Application for Permanent Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). The priority date of the petition is January 15, 2013. The proffered wage is \$105,934.

Upon review of the entire record, including evidence submitted on appeal and in response to our request for evidence, we conclude that the Petitioner has established that it is more likely than not that it had the ability to pay the proffered wage as of the January 15, 2013, priority date. The Beneficiary may be classified as a professional with an advanced degree because the job offered may be classified as such and because he had all the education, training, and experience specified on the labor certification as of the priority date. *See* 8 C.F.R. § 204.5(k)(1). Accordingly, the petition is approved under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *See Matter of Brantigan*, 11 I&N Dec. 493

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(BIA 1966); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of PBKA-, Inc.*, ID# 16183 (AAO June 27, 2016)